

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

x

BRUCE DEL TURCO, et al.,

Plaintiffs,

ORDER

- against -

PMT FLOORING CO., INC., et al.,

Civil Action No.
CV-04-824 (DGT)

Defendants.

x

TRAGER, J.

On January 13, 2005, pursuant to Fed. R. Civ. P. 72(a), plaintiffs in the above-captioned case filed an objection to the January 3, 2005 Memorandum and Order of United States Magistrate Judge Roanne L. Mann declining to set a schedule for discovery and finding that "[a]ny discovery beyond what has already been conducted has been waived." P. 2.

Although the parties represented to the court that they had reached a settlement, they were unable to finalize this settlement. In a letter dated December 10, 2004, plaintiffs informed the magistrate judge of the failed settlement attempt and also sought discovery, but did not identify the parameters of such discovery. Letter from Charles R. Virginia to Magistrate Judge Mann dated December 10, 2004. The letter did state that a discovery schedule would be submitted "next week." Id. Between the time when this letter was filed and the January 3 Order that is the subject of this motion was entered, plaintiffs did not file a discovery schedule, nor did they inform the magistrate judge what information they were seeking during discovery. This was in direct contravention of the magistrate judge's September 27, 2004 Memorandum and

Order and repeated admonitions that the court would not tolerate any further delays in this case.
See e.g. September 7, 2004 and July 12, 2004 Orders.

Fed. R. Civ. P. 72(a) requires that “[t]he district judge to whom the case is assigned shall consider [objections filed pursuant to Rule 72(a)] and shall modify or set aside any portion of the magistrate judge’s order found to be clearly erroneous or contrary to law.” After a review of the record, it is evident that plaintiffs have failed to demonstrate that Magistrate Judge Mann’s January 3, 2005 Memorandum and Order was clearly erroneous or contrary to law. The January 3, 2005 Memorandum and Order is reasonable and appropriate in light of the clear orders regarding discovery issued by Magistrate Judge Mann throughout this case and her repeated warnings that the case should not be further delayed. Accordingly, it is hereby

ORDERED that the court affirms Magistrate Judge Mann’s January 3 Order.

Dated: Brooklyn, New York
April 29, 2005

SO ORDERED:

_____/s/
David G. Trager
United States District Judge